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EXAMINER	
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/552,027	ROLF, THEODORUS SUIBERTUS ANTHONIUS	
	Examiner	Art Unit	
	AMIR KLAYMAN	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 November 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/15/10*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. Exemplary rationales that may support a conclusion of obviousness include:

(A) Combining prior art elements according to known methods to yield predictable results;

(B) Simple substitution of one known element for another to obtain predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) " Obvious to try " – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

1. Claims 17-20, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605.

Cyrus discloses a modular building set (2) including lattice (4), base (6), terrain (8), and playing component (10). The lattice (4) includes a column (12). This column (12) is construed by the examiner as a toy building block capable of being stacked (see fig 4 as well as column 8, lines 9-12, wherein the lattice includes a plurality of removable stacking columns (12)). The toy block (i.e. column (12)) has a top surface (16) with at least one stud having plurality of teeth (construed as male fitting (20) having 4 teeth; as best seen in fig 5, there are at least 4 studs), and a bottom surface (18) with a plurality of female fittings in the same configuration and orientation as the male fittings (20) on top (16) of column (12) as discussed in column 8, lines 7-9. Thus, Cyrus explicitly discloses that the bottom (18) has at least one recess (i.e. a plurality of female fittings, and according to the embodiment shown in fig 5, the bottom (18) has 4 female recesses fittings). Cyrus is silent regarding the stud has a height extending above the top surface of the block by at least 30% of the height of the block.

Examiner notes that the court had decided that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). What is the difference in critically between a stud's height that is at least 25% or 35% of the block's height than as claimed? One of ordinary skilled in the art would have been able to form applicant's invention without any prior knowledge of this specific height of the stud.

Therefore, it would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Cyrus's stud's height to be at least 30% of the block's height for the reason that a skilled artisan would have been motivated to optimize a stud's height in order to provide the best secured position between one block to another while at least two blocks are secured/stacked to each other using one block's stud inserted into another block's recess.

As per claim 17, Cyrus discloses a toy building block (construed as column (12)) capable of being stacked (in fig 4 and in column 8, lines 9-12), comprising:

a top surface of the block (16) having thereon at least one stud with a plurality of circumferentially arranged, substantially equally spaced teeth with rounded crests and interspersed rounded grooves (construed as male fitting (20); see in fig 5, each stud (20) has 4 teeth, substantially equally spaced from each other with rounded crests and interspersed rounded grooves);and

a bottom surface (18) of the block having at least one recess with sidewalls, at least one sidewall of the recess having a substantially vertically extending land shaped complementary to and extending into a respective one of the rounded grooves of the stud, wherein the stud is configured and operable to be insertable in the recesses of other like toy building blocks, and the stud on one block is guided into a recess of another of the blocks by the lands in the recess of the other block wherein the recesses are shaped such that one of the studs inserted in one of the recesses is guided by at least three zones of contact, and at least one of the zones is a land in the recess of

another of the blocks engageable in a groove one of the rounded grooves in the stud (as Cyrus explicitly discussed in column 8, lines 7-17, the bottom has a plurality of female fittings (i.e. at least one recess) **in the same configuration and orientation as the male fittings (20)**. Thus, when male fitting situated within a female fittings, the stud is guided by at least three zones of contact, and a male's rounded grooves and recesses engaged with a female's rounded grooves and recesses). Cyrus is silent regarding the stud has a height extending above the top surface of the block by at least 30% of the height of the block. However, in light of the court decision in In re Aller, it would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Cyrus's stud's height to be at least 30% of the block's height for the reason discussed above.

The examiner construed Cyrus's column (12) as a toy building block according to the plain and ordinary meaning of the term "toy" as defined by a dictionary. The term "toy" defined as -- an object, often a small representation of something familiar, as an animal or person, for children or others to play with; plaything; a thing or matter of little or no value or importance; a trifle; something that serves for or as if for diversion, rather than for serious practical use; a small article of little value but prized as a souvenir or for some other special reason; trinket; knickknack; bauble; something diminutive, esp. in comparison with like objects; an animal of a breed or variety noted for smallness of size: The winning terrier at the dog show was a toy; a close-fitting cap of linen or wool, with flaps coming down to the shoulders, formerly worn by women in Scotland--.

Thus, Cyrus's column (12), according to a dictionary, is a toy building block.

Also, with respect to the limitation that the block capable of being stacked, it is noted that the term “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See in In re Hutchison, 69 USPQ 138.

As per claims 18, 19, as discussed by Cyrus in column 8, lines 5-17, the bottom (18) having a recess (i.e. female fittings) complementary to the stud (i.e. male fitting (20)), thus the recess further comprises at least three of the vertically extending lands each shaped complementary to the rounded grooves of the stud; wherein the lands constitute the majority of contact zones for guiding a stud inserted into the recess (when one block's stud (male fitting (20)) being insert within a complementary/ harmonizing /matching recess (female fittings) of another block).

As per claim 20, Cyrus’s stud (20) has a rotational symmetry of at least 4-fold as best seen in fig 5.

As per claim 22, Cyrus discloses in column 7, lines 59-61 that column (12) (i.e. the toy building block) is substantially cubic in shape. As discussed above (see Cyrus fig 5, and column 7, line 43 to column 8, line 17) Cyrus’s block has at lest one stud (20) and complementary/ harmonizing /matching recess (female fitting/s).

As per claim 25, Cyrus's block (12) is a hollow block as seen in fig 5. Also, the female recesses in bottom (18) thereof are hollows in order to accommodate stud/s (20) therein. Furthermore, Cyrus's stud/s (20) has a center recess (24) as discussed in column 7, lines 62-64. Thus, Cyrus's block (12) comprises a hollow portion.

With respect to the method of manufacturing the block by blowing technique, although Cyrus is silent regarding the process of manufacturing his blocks, the examiner notes that it has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See In re Thorpe, 777F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

2. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to the claim 17 above, and further in view of Bretting US 3,487,579, Fischer DE 3503211, and Orgass et al US 4,582,495.

As per claim 21, Cyrus is silent regarding his stud having a rotational symmetry of 6, 8, or 12 fold.

In the field of building blocks and toy building blocks Bretting teaches a projecting frame (16) extending above area (15) (as seen in fig 2 and discussed in column 2, lines 62-72) having a rotational symmetry of 6 fold. Orgass teaches pegs 6 having a rotational symmetry of 12 fold in figs 1-2 (see in column 3, lines 36-41, wherein peg (6) having twelve grooves (7)). In the same field, Fischer teaches a symmetry of 8 fold (construed as the 8 index stations of grooves introduced in the bores (2); see fig 1 as well as the machine translation pages 1-2).

Examiner construed Bretting's extending frame, Fischer's index stations, and Orgass's peg as studs according to a dictionary definition. The dictionary defines a stud as being any of various projecting pins, lugs, or the like, on machines or other implements. Accordingly, Bretting's, Fischer's and Orgass's projection/s elements are considered as studs.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to from Cyrus's stud rotational symmetry of 4 fold as a rotational symmetry of 6 fold, 8 fold, or 12 fold as taught by Bretting, Fischer, and Orgass, respectfully, for the reason that a skilled artisan would have been motivated by Cyrus explicit suggestion that male fittings (20), as well as female fittings (i.e. within bottom (18)) can be any shape that provides removable attachment of two components with secure connection when attached as discussed in column 8, lines 13-17.

3. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Simmons et al US 6,088,987.

As per claim 23, Cyrus does not disclose that the stud and the recess having a pass-through hole.

In the field of building blocks being capable to be formed in a miniature embodiments such as in LEGO (in column 6, lines 15-25), Simmons teaches a building block (module (13)) having a stud (construed as tenons (18)) and recess (construed as mortises (19)) with a pass-through hole as discussed in column 5, lines 9-39 (see also fig 8b, regarding the pass through hole extending from top to bottom of the block).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Cyrus's block with a pass-through hole as taught by Simmons for the reason that a skilled artisan would have been motivated in applying a known technique (Simmons's block having a pass-through hole extending from top to bottom of the block) to a known device (Cyrus's toy building block) ready for improvement to obtain the predictable results of providing more security degree to the blocks assembly by constructing a pass through hole within a block so a fastening element can pass there-thorough (as seen in Simmons's fig 4) and therefore securing one block to another not only by the stud fitting within the recess but with an additional an external fastening element/s.

As per claim 24, as seen in Simmons's fig 8b, the stud (tenon (18)) has a pass-through hole; also Simmons's stud is provided with an enlargement area thereon to receive retainer (32) and threaded rod (35) with nut and washer (36) as best seen in figs 4 and 6.

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Glynn US 5,725,411.

As per claim 26, Cyrus does not disclose al lest one slots penetrating a lateral outer face for holding edges of construction devices.

In the field of toy building blocks, Glynn teaches a block (100) having lateral outer face (103) with at least one penetrating slot (construed as recessed connection means (126) configured to hold edge of construction beam (105) as best seen in figs 6a-6h and discussed in column 4, line 50 to column 5, line 42.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Cyrus's block with slots penetrating a lateral face to hold a construction device thereon as taught by Glynn for the reason that a skilled artisan would have been motivated in applying a known technique (Glynn's block having a slot penetrating a lateral face for holding a construction device) to a known device (Cyrus's building block) ready for improvement to obtain the predictable results of forming a

block with a slots penetrating a lateral face capable of holding construction devices as taught by Glynn.

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Garpow US 6,506,091.

Claim 27, Cyrus discloses at least one stud comprises a piece having the plurality of circumferentially arranged, substantially equally spaced teeth with rounded crests and interspersed rounded grooves (as discussed above, construed as male fitting (20)) and the piece is configured to be inserted in the at least one recess (in column 8, lines 5-17, wherein the male fitting (20) (i.e. a stud with plurality of teeth having rounded grooves and crests as seen in fig 5) is to be insert within a complementary/ harmonizing /matching recess (i.e. a female fitting in bottom (18)).

Cyrus is silent, wherein the block comprises a bivalent building block having at least one of the recesses on the top surface and the bottom surface. Also, Cyrus is silent regarding the stud being double a length of the recess.

In the field of toy building blocks, Garpow teaches a block (10) comprises a bivalent block having at least one recesses on the top surface (construed as a recess's/aperture's (47) from the block's top surface to the middle of it) and the bottom surfaces (construed as a recess's/aperture's (47) from the block's middle surface to the bottom surface, i.e. the opposite surface from the top surface). The examiner construed

Garpow's recess/aperture as having a bottom and top recess according to applicant's disclosure, in particularly in reference to applicant's fig 8. What applicant refers to top and bottom recess (6) are merely top and bottom of a hollow aperture the pass through the block.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to form Cyrus's block comprising a bivalent building block having at least one of the recesses on the top surface and the bottom surface as taught by Garpow for the reason that a skilled artisan would have been motivated by Garpow's explicit suggestion to form a building block to be easily utilized by children in column 2, lines 13-15. A skilled artisan would have been motivated to form Cyrus's building block as being easily utilized by children (as taught by Garpow), especially when Cyrus teaches a toy building block.

With respect to the stud being double length of the recess, as discussed above with respect to claim 17, the examiner notes that it has been held that claims which fall within the broad scope of the references are unpatentable there over because, among other reasons, there is no evidence of the criticality of the claimed ranges of weight or proportions; see In re Hoeschele, 406 F.2d 1403, 160 USPQ 809(CCPA 1969).

Applicant needs to provide evidence (emphasis) that while forming his invention, the block's stud must be double the length of the block's recess, is critical and essential. The main question to ask is what distinguishes a stud that is double the length of the recess than a stud that is little less than double or little more than double in length comparing to the length of the recess?

6. Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 and Simmons et al US 6,088,987 as applied to claim 23 above, and further in view of Lindenmeyer US 2,609,638.

As per claims 28, Simmons discloses a screw (construed as threaded rod (35)) having a threaded body in figs 3-4. However the combination Cyrus and Simmons is silent regarding a screw having a second inner thread in the screw's head.

In the field of toy connectors, Lindenmeyer teaches a screw (studs (22) and (22')) having a first thread (13) on the screw's body within its terminal section and second inner thread (18'') in the screw's head in figs 7 and 16; see also figs 14-15 and column 5, lines 18-36.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to substitute the modified Cyrus's fastening element (as taught by Simmons, i.e. threaded rod (35) and nut & bolt (36)) with Lindenmeyer's screw type, for the reason that a skilled artisan would have been motivated in providing a simple substitution for one known element (Simmons's fastening elements) for another (Lindenmeyer's fastening element , i.e. a screw type element) to obtain the predictable results of fastening one building block to another building block using a well known fastening means.

As per claim 29, as discussed above, the modified Cyrus would have had a screw with a first thread on the screw's body (as taught by Simmons) and second inner thread in the screw's head (as taught by Lindenmeyer). Furthermore, the modified Cyrus building block would have had a hole passing through the stud and the recess (as taught by Simmons) to receive a fastening element (i.e. a screw). Examiner construed Lindenmeyer's screw's head to have a recess thereon having a cross-section of regularly arranged, inwardly directed crests separated by generally circle shaped grooves as seen in figs 7, 16 and in figs 14-15 (see also column 5, lines 18-36).

With respect to screw's had is configured to receive a tool there-within, examiner notes while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). The modified Cyrus's structure is fully capable of performing the same function as claimed, since his device is equipped with the same features as the claim subject matter.

7. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons et al US 6,088,987 and Lindenmeyer US 2,609,638 as applied to claim 29 above, and further in view Garpow US 6,506,091.

As per claim 30, Lindenmeyer discloses cross-section of the recess in the head of the screw is generally circle shaped groove/s in figs 7, 16 and in figs 14-15 (see also column 5, lines 18-36). Lindenmeyer is silent regarding the cross section of the recess in the head has at least 4 of the crests. Examiner construed Garpow's connectors (40), (50), and (60) as screws, wherein each screw has cross section of the recess in the head has at least 4 of the crests (construed as each of the connector's top that has being divided into 4 substantially equal pies like shapes).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Lindenmeyer's cross section of the recess in the head has at least 4 of the crests as taught by Garpow for the reason that a skilled artisan would have been motivated in providing a simple substitution for one known element (Lindenmeyer's screw's head being generally in circle shape) for another (Garpow's cross section of the recess in the head that has at least 4 of the crests) to obtain the predictable results of forming a building block assembly includes fasteners (screws or the like) having a recess in the head capable to accommodate another screw thus making the assembly fasten and secure.

8. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons et al US 6,088,987 and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Deahr US 5,498,188.

As per claim 31, the modified Cyrus is silent regarding a screwdriver tool.

In the field of toy building structure, Deahr teaches a toy building structure (10) in fig 1 and a screwdriver (124) in fig 4. It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide the modified Cyrus toy block assembly a screwdriver tool as taught by Deahr to obtain the predictable results of using a well known screwdriver tool to insert and fasten a screw within a threaded hole, thus to secure the connection of one block to the another.

9. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 in view of Simmons et al US 6,088,987as applied to claim 23 above, and further in view of Garpow US 6,506,091.

As per claim 32, the combination Cyrus & Simmons does not disclose the use of a threaded section within the pass-through hole. However, Garpow teaches a threaded section (46) (i.e. pass-through hole with threaded surface) as seen in fig 3.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide the combination Cyrus & Simmons's pass-through hole with a threaded section thereof as taught by Garpow for the reason that a skilled artisan would have been motivated to use a known technique (Garpow's pass-through threaded hole) to improve similar devices (Cyrus & Simmons's building block) in the same way (having a block with a pass-through hole) to obtain the predictable results of forming a pass-through hole within a building block in order to insert a fastening element there-through

and therefore securing one building block with another building block using a well known threaded surface.

As per claim 33, as seen in Simmons's fig 8b, the stud (tenon (18)) has a pass-through hole; also Simmons's stud is provided with an enlargement area thereon to receive retainer (32) and threaded rod (35) with nut and washer (36) as best seen in fig 4.

10. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons et al US 6,088,987, and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Garpow US 6,506,091.

As per claim 34, the modified Cyrus, within the reference to Lindenmeyer, teaches a screw (studs (22) and (22')) having a first thread (13) on the screw's body within its terminal section and second inner thread (18") in the screw's head as seen in Lindenmeyer's figs 7 and 16. The modified Cyrus is silent regarding a threaded pass-through hole. As discussed in claims 32-33 above, Garpow teaches a threaded pass-through hole (46) within a building block as seen in fig 3.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide the combination Cyrus, Lindenmeyer , and Simmons's pass-through hole with a threaded section thereof as taught by Garpow for the reason that a skilled artisan would have been motivated to use a known technique (Garpow's pass-

through threaded hole) to improve a similar devices (the combination Cyrus, Lindenmeyer & Simmons's building block) in the same way (having a block with a pass-through hole) to obtain the predictable results of forming a pass-through hole within a building block in order to insert a fastening element there-through and therefore securing a building blocks assembly. The modified Cyrus would have had a threaded pass-through hole (as taught by Garpow) having a fastening screw with a treaded head (as taught by Lindenmeyer), wherein the screw's threaded head (i.e. the first threaded head) is smaller than the screw's body (i.e. the fourth threaded head).

As per claim 35, examiner construed Lindenmeyer's screws to have a recess thereon having a cross-section of regularly arranged, inwardly directed crests separated by generally circle shaped grooves as seen in figs 7,16 and in figs 14-15 (see also column 5, lines 18-36). With respect to screw's had is configured to receive a tool there-within, examiner notes while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). The modified Kushner's structure is fully capable of performing the same function as claimed, since his device is equipped with the same features as the claim subject matter.

Response to Arguments

11. Applicant's arguments with respect to claims17-20, 22, 23, 25, 26, and 28-35 have been considered but are moot in view of the new ground(s) of rejection.

12. Regarding applicant's argument with respect to claims 23 and 24, applicant states that "However, the scale model disclosed in Simmons is indicated to be temporarily constructed for planning purposes only. **The blocks used for this purpose would therefore not be expected to include each and every feature of their full-size counterpart**. Specifically where, as in this case, the features of the full-sized block that are relied upon are specifically concerned with the permanent joining of full-size concrete construction blocks. **Such features would not be present in the toy miniatures, which are made of plastic and held by friction**. This statement is applicant's own conclusion definitely (emphasis) not based on the prior art teachings. Simmons in column 6, lines 15-25, explicitly states "The invention includes miniature embodiments of all the full size modules, such as in a LEGO® set. The purpose of the miniature modules is to facilitate the design and construction of a scale model of any proposed structure. The miniatures are preferably cast in durable plastic. Each miniature preferably includes an identifying number cast in it that corresponds to the part number of the full size module that it represents. This identification system allows a builder or designer to disassemble a scale model of a constructed design and produce an exact bill of materials required for the actual construction project, thus eliminating waste and cost". No where in Simmons's disclosure one would have come to such a daring conclusion that Simmons indicated to utilize his miniature embodiments to be a

temporarily constructed for planning purposes only (emphasis). On the contrary, Simmons indication that his invention can be formed into a miniature scale such as the famous children LEGO building block set, emphasis the fact that Simmons invention can be a toy building block.

Furthermore, applicant statement "**The blocks used for this purpose would therefore not be expected to include each and every feature of their full-size counterpart**" left the examiner puzzled. How can applicant declare such a bold statement when Simmons explicitly states" **The miniatures are preferably cast in durable plastic. Each miniature preferably includes an identifying number cast in it that corresponds to the part number of the full size module that it represents**".

Thus, applicant's arguments regarding the teachings of Simmons are applicant's own conclusions not base on the prior art and therefore are not persuasive.

13. With respect to applicant's argument that the examiner did not rely on prior art to conclude that it would have been obvious to form the stud to have a height extending above the top surface of the block by at least 30% of the height of the block, as discussed in the previous office action, as herein, applicant MUST provide evidence that this specific height of the stud is essential in forming his invention. The examiner relied on the court ruling in In re Aller, that it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the stud is such a height. Since applicant did not provide any evidence that this height is indeed essential to form his invention, the examiner maintains his position that it would have been obvious to from the block's stud in such height in light of the court ruling.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMIR KLAYMAN whose telephone number is (571)270-7131. The examiner can normally be reached on Mo. - Fr. (7:30AM-5:00PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene KIM can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AK/ 1/4/11
/Gene Kim/
Supervisory Patent Examiner, Art Unit 3711